



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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## FREE WAREHOUSING FURNISHED RETAILERS AS INDUCEMENTS TO MAKE VOLUME PURCHASE

Proprietors of Distilled Spirits Plants,  
Wineries, Breweries, Wholesale Liquor  
Dealers and Others Concerned:

Purpose. The purpose of this circular is to advise industry members that an ATF Ruling will be published in an early issue of the ATF Bulletin regarding "Furnishing, Giving, or Providing Retailers With Free Warehousing." The ruling will read substantially as follows:

The Bureau of Alcohol, Tobacco and Firearms has been requested to determine whether suppliers, e.g., distillers, bottlers, and wholesale dealers of distilled spirits, wines or beer, by accepting payment for merchandise and agreeing to delay delivery, would be furnishing a service or a thing of value within the meaning of 27 CFR 6.20 regarding unlawful inducements to retail dealers in such products.

The attention of the Bureau has been directed to the current practice of certain suppliers entering into volume sales agreements with retailers wherein such retailers agree to make volume purchases with the understanding that the merchandise will be delivered on an as-needed basis. The merchandise is immediately invoiced and the retailer pays for it within the time frame specified under credit laws; however, in some instances delivery is delayed for as long as a year from the date of sale.

At the time of purchase, the merchandise involved appears generally to fall into one of two categories:

- (1) Available for shipment (products are in the supplier's inventory of cased goods).
- (2) Not available for shipment (products are not yet bottled, not yet produced; or, in the case of wholesalers, not yet purchased).

27 U.S.C. 205(b)(3) prohibits permittees from furnishing, giving, or providing retailers with services or other things of value if it directly or indirectly induces such retailers to purchase the supplier's products to the exclusion in whole or part of such products sold or offered for sale by other persons in interstate or foreign commerce.

Regulations, 27 CFR 6.20, provide, in effect, that it is unlawful for any industry member to induce, by furnishing, giving, etc., services or other things of value, directly or indirectly or through an affiliate any retailer to purchase any products from such industry member to the exclusion in whole or in part of such

products sold or offered for sale by other industry members in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such industry member engages in the practice of using such means to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other industry members from selling or offering for sale any such products to such retailer in interstate or foreign commerce. However, in the case of malt beverages, the foregoing restrictions shall apply to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of the State imposes requirements similar to the requirements of 27 U.S.C. 205(b), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be.

It is the Bureau's position that a supplier, by accepting payment for the merchandise and agreeing to delay delivery, would be furnishing a service or a thing of value within the meaning of 27 U.S.C. 205(b)(3). An agreement to make delayed deliveries over an extended period of time may induce the retailer to make volume purchases which ordinarily he would not be able to make if he had to take possession of the entire order at the time of payment. In view thereof, it is held the effect of such an agreement regardless of whether the supplier is physically warehousing the merchandise is tantamount to furnishing free warehousing. In fact, as far as the retailer is concerned, he is receiving free warehousing. Therefore, if the furnishing of this service induces a retailer to purchase merchandise from the supplier to the exclusion in whole or part of that offered by other persons in interstate or foreign commerce, a violation would ensue.

The Bureau intends no restrictions on advance ordering, volume purchasing, or other sound and usual commercial practices. However, to ensure that such practices will not result in proscribed actions delivery of the total order should be made at the time payment for the merchandise is received. If a retailer is purchasing on credit, final delivery of the merchandise should be effected before the close of the period for which credit is extended.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N. W., Washington, D. C. 20226.

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